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NOTES.

TRUST RECEIPTS.—The trust receipt agreement is a kind of security which is rapidly finding favor with bankers who make advances to importers of merchandise. It is the custom for an importer to obtain from his bank a letter of credit in favor of a foreign seller, who then ships the goods consigned to the bank and draws on the bank for the purchase price. On arrival of the goods, the bank, which now has legal title to them, indorses the bill of lading to the importer, and takes in return a trust receipt stating that the goods are received by the importer as the property of the bank in trust to sell and devote the proceeds to the payment of the advances made by the bank. The object of the transaction is to permit the importer to take possession of the goods and sell them so as to get funds to repay the bank's advances without at the same time endangering its security.

The courts are at a loss to determine under which of the recognized classes of security arrangements trust receipts shall be grouped. It is important to note as a starting point that, in nearly every case, the agreement reserves the legal title to the goods in the banker until the importer repays his advances, and the courts are unanimous in recognizing this legal title and in protecting it.[1] Since, therefore, the bank is the legal owner, it cannot be a *cestui que trust*, a pledgee, or a legal or equitable lienor.[2] The idea of a pledge or lien is still further negatived by the fact that the bank retains its security after parting with possession of the goods. The transaction is unlike a factor's agreement in that a factor simply remits to his principal a certain percentage of the proceeds from his sales,[3] whereas the importer is bound to pay the fixed purchase price which was advanced by the bank, regardless of what he realizes from the goods. This process of elimination leaves conditional sales and chattel mortgages as the only forms of security to which a trust receipt agreement is similar, but the authorities are in conflict as to which of these transactions it is most like.[4]

If it be a chattel mortgage, it must be recorded to be valid against the creditors of the importer,[5] and this is also true of conditional sales in many States.[6] Again, were it placed under either of those categories, the fact that the debtor is permitted to sell and deal with the property as his own would, in most jurisdictions, estop the banker from asserting his title in the event of the importer's insolvency.[7] And yet the courts have not only refused to apply the Recording Acts to these transactions,[8] but have also upheld the banker's rights against parties claiming under the importer as judgment or attaching creditors,[9] lienors,[10] trustees in bankruptcy,[11] pledgees,[12] and even an innocent purchaser for value of

[1]Notes 6-10, *infra*. In the case of *In re* Liberty Silk Co. (D. C. 1907) 152 Fed. 844, the trust receipt was couched in the language of lien, and consequently was held void against the importer's creditors.

[2]See Burdick, Sales (3rd ed.) 34-35.

[3]See *In re* Penny & Anderson (D. C. 1909) 176 Fed. 141.

[4]*Cf.* New Haven Wire Co. Cases (1888) 57 Conn. 352; Charavay *v.* York Silk Mfg. Co. (C. C. 1909) 170 Fed. 819; Moors *v.* Drury (1904) 186 Mass. 424; Williston, Sales, § 286, note 3. The Pennsylvania courts get around their harsh rule that conditional sales are fraudulent, by calling trust receipts bailments. Brown Bros. & Co. *v.* Billington (1894) 163 Pa. 76.

[5]See *In re* Liberty Silk Co., *supra*.

[6]Williston, Sales, § 327; N. Y. Pers. Prop. Law, § 62.

[7]*Cf. In re* Garcewich (C. C. A. 1902) 115 Fed. 87; *In re* Antigo Screen Door Co. (C. C. A. 1903) 123 Fed. 249; Elkus & Glenn, Secret Liens, § 195; *contra, In re* E. M. Newton & Co. (C. C. A. 1907) 153 Fed. 841.

[8]*In re* Reboulin Fils Co. (D. C. 1908) 165 Fed. 245.

[9]Mershon *v.* Moors (1890) 76 Wis. 502; Brown Bros. & Co. *v.* Billington, *supra*.

[10]Century Throwing Co. *v.* Muller (C. C. A. 1912) 197 Feb. 252; Barry *v.* Boninger (1876) 46 Md. 59.

[11]*In re* Cattus (C. C. A. 1910) 183 Fed. 733; Roth *v.* Smith (C. C. A. 1914) 215 Fed. 82; but *cf. In re* Liberty Silk Co., *supra*.

[12]Moors *v.* Kidder (1887) 106 N. Y. 32. But this seems contrary to the present New York Factor's Act, N. Y. Pers. Prop. Law, § 43. See New York Security & Trust Co. *v.* Lipman (1899) 157 N. Y. 551.

the importer's claims against purchasers of the goods.[13] These decisions may rest on a distinction which the courts have adopted with reference to other consignment arrangements, which is that if the debtor is permitted to sell the goods and treat the proceeds as his own, the retention of title by the creditor is a fraud;[14] but if the agreement that the debtor can sell require him to apply the proceeds in diminution of the debt secured by the goods, the creditor's title will be recognized.[15] Or the cases may rest on the broader ground that since trust receipt agreements are well recognized in business circles as legitimate and necessary to commerce, the courts will always strive to protect the banker's title.[16] But whatever may be the reason, the fact remains that the courts refuse to subject such agreements to the disabilities which are imposed upon conditional sales and chattel mortgages, a fact which seems to indicate that those courts are correct which distinguish them from either.[17]

Other questions arise apart from the validity of the bank's title against claimants under the importer. In the recent case of *Brown* v. *Massachusetts Hide Corporation* (C. C. A. 1915) 218 Fed. 769, the trust receipt stipulated that the importer should hold the goods and their proceeds as security not only for the payment of the debt for those particular goods, but also for "any other indebtedness." Upon the appointment of a receiver for the importer, the bank claimed that some goods which the importer had already paid for should be treated as security for other debts not yet due. The District Court disallowed this claim, following the *New Haven Wire Company Cases*,[18] which hold that the transaction is a conditional sale and that, therefore, as soon as the importer pays for the goods and all debts then due, title passes free from any lien for other debts.[19] The Circuit Court of Appeals, however, rejected this doctrine and upheld the bank's contention. This decision is in harmony with the leading case of *Charavay* v. *York Silk Manufacturing Company*,[20] in which also the court feels bound to repudiate any idea of conditional sale in order to permit the bank to reclaim and sell the property and then recover from the importer any deficiency between the amount realized on the sale and the amount advanced to the importer. As a matter of principle, it is submitted

[13] *In re* Dunlap Carpet Co. (D. C. 1913) 206 Fed. 726, affd. (C. C. A. 1914) 210 Fed. 156.

[14] Pontiac Buggy Co. *v.* Skinner (D. C. 1908) 158 Fed. 858; Mishawaka Woolen Mfg. Co. *v.* Westveer (C. C. A. 1911) 191 Fed. 465.

[15] *In re* Perlhefter (D. C. 1910) 177 Fed. 299; *In re* E. M. Newton & Co., *supra*. Ludvigh *v.* American Woolen Co. (C. C. A. 1911) 188 Fed. 30, affd. (1913) 231 U. S. 522, enunciates this doctrine, but there the debtor was merely a bailee who was permitted to sell the goods but could return those which he was unable to sell, and was not bound to pay for them. Such a bailment is very different from a conditional sale or a trust receipt agreement, where the bailee of the goods is unconditionally bound to pay a fixed price for them. *In re* Wright-Dana Hardware Co. (C. C. A. 1914) 211 Fed. 908.

[16] See Roth *v.* Smith, *supra; In re* Cattus, *supra*.

[17] *In re* Reboulin Fils Co., *supra*.

[18] *Supra*.

[19] Vaughan *v.* Massachusetts Hide Corporation (1913) 209 Fed. 667.

[20] *Supra; cf.* Earle *v.* Robinson (N. Y. 1895) 91 Hun 363.

that here, as in the cases involving the validity of trust receipts, the same results can be reached whether we call the transaction a conditional sale or a mortgage. Since the retention of title by a conditional vendor is merely to have security for the purchase price, the transaction is in its essence a mortgage.[21] This is evidenced by the fact that the risk of loss of the goods is not on the seller, despite his legal title, but is on the buyer.[22] It follows that since a mortgagee is permitted to foreclose and sell the property and then recover any deficiency from the mortgagor, a conditional vendor should have a similar right.[23] The court in the *Charavay Case* seems to fear that if a conditional vendor retakes the goods he thereby destroys the consideration for the debtor's obligation to pay and consequently cannot thereafter maintain an action for the deficiency. But this difficulty is avoided if the vendor reclaim the property, not as his own, but expressly for the purpose of reselling on account of the buyer.[24] And finally, it is only a logical extension of this analogy to permit the conditional vendor's title to stand as security, not only for the purchase price of those particular goods, but also for other debts as well if the parties so stipulate. In such a case, the bank might be the legal owner of the goods until they were paid for, and might thereafter have an equitable lien on them for other debts.[25]

EQUITABLE CONVERSION AS BETWEEN LIFE TENANT AND REMAINDERMAN.—Where a life estate is followed by one or more remainders, the testator is presumed to have intended to afford the remainderman a substantial enjoyment of the property, and in the endeavor of the courts to carry out this intention without prejudicing the life tenant, perplexing problems often arise. In order to effectuate this supposed intention, it has been found necessary in many cases to invoke the doctrine of equitable conversion. Since the facts indicating the testator's intention vary with each case, the theory is, however, often difficult of general application. There is obviously no objection to invoking the doctrine where there has been a specific testamentary direction, mandatory in its nature, to convert realty into personalty or *vice versa*,[1] without leaving any discretion in the executor or trustee.[2] Where the trustee is given discretion as to the time or

[21]Williston, Sales, § 330.

[22]Tiffany, Sales, 142-143.

[23]Prof. Williston, 20 Harvard Law Rev.. 370-371 and note.

[24]Perhaps this may explain the result in Drexel *v.* Pease (1892) 133 N. Y. 129, which is said in the Charavay Case to be inconsistent with conditional sale.

[25]See *In re* Cattus, *supra*.

[1]McFadden *v.* Hefley (1887) 28 S. C. 317.

[2]Fisher *v.* Banta (1876) 66 N. Y. 468; Allen *v.* Watt's Exr. (1893) 98 Ala. 384. With the consent of the beneficiaries, the property may, however, remain realty. This is said to constitute a reconversion, and may be evidenced by a deed in which all the beneficiaries join, or by the terms of the answer, Duckworth *v.* Jordan (1905) 138 N. C. 520, or by a simple indication of their intention to relinquish the right to an actual sale. Howell *v.* Mallon (1899) 189 Pa. 169.